

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
)
-vs-) Case No. CR-10-281-F
)
ALBERTO GOMEZ-GOMEZ,)
)
Defendant.)

ORDER

The court is in receipt of an undated and unsigned letter purportedly from defendant Alberto Gomez-Gomez. It appears defendant seeks to modify his sentence or requests counsel to assist him in obtaining modification of his sentence.

Initially, the court advises defendant that a request to the court must in the form of a motion. See, Rule 47, Fed. R. Crim. P. ("A party applying to the court for an order must do so by motion.") The court will not consider requests contained in a letter. If defendant wishes to submit a request for the court's consideration, he must submit a motion conforming to this court's Local Criminal Rules and the Federal Rules of Criminal Procedure. Defendant's *pro se* status does not exempt him from these requirements. *See, Green v. Dorrell*, 969 F.2d 915, 917 (10th Cir. 1992).

Additionally, the court advises defendant that, without an express grant of jurisdiction, the court lacks jurisdiction to modify defendant's sentence. *See, United States v. Green*, 405 F.3d 1180, 1184 (10th Cir. 2005). Congress has provided a source of jurisdiction in 18 U.S.C. § 3582(b), which permits modification or correction of sentences under the provisions of:

- 18 U.S.C. § 3582(c)
- Federal Rule of Criminal Procedure 35, and
- 18 U.S.C. § 3742.

Defendant does not identify or invoke any of these bases as a reason for modifying his sentence.

Further, the court advises defendant that he is not entitled to the appointment of counsel to assist him in filing a post-conviction motion. *See, Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987) (right to appointed counsel extends to first appeal of right and no further); *Coronado v. Ward*, 517 F.3d 1212, 1218 (10th Cir. 2008) (no constitutional right to counsel beyond direct appeal of criminal conviction). While the court has discretion to appoint counsel, *see, Engberg v. Wyoming*, 265 F.3d 1109, 1122 (10th Cir. 2001), the court would not exercise such discretion under the circumstances discussed by defendant since his position lacks merit; it is not factually or legally complex; and defendant is able to adequately present his position.

DATED this 7th day of December, 2022.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE